

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL SAUNDERS, *on behalf of himself*
and all others similarly situated,

Plaintiffs,

v.

BREDA, INC. d/b/a BREDABEDS,

Defendant.

CASE NO: 1:23-cv-10690

**DEFENDANT'S
ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S
CLASS ACTION COMPLAINT**

Defendant Breda, Inc. d/b/a BredaBeds ("BredaBeds"), by and through counsel, hereby submits the following answers and affirmative defenses to Plaintiff Michael Saunders' ("Plaintiff") Class Action Complaint (Doc. 1). BredaBeds denies any and all allegations that are not specifically admitted herein.

1. BredaBeds states that Paragraph 1 contains no allegations directed to BredaBeds and, therefore, no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 1, and therefore, denies same.

2. BredaBeds states that Paragraph 2 contains no allegations directed to BredaBeds and, therefore, no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 2, and therefore, denies same.

3. BredaBeds admits that it operates the website <https://www.bredabeds.com> ("Website"), which is an e-commerce store that provides consumers with access to an array of specialized manufactured Murphy and Wall beds in various styles. BredaBeds denies any and all remaining allegations contained in Paragraph 3.

4. BredaBeds states that Paragraph 4 contains no allegations directed to BredaBeds and, therefore, no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and therefore, denies same.

5. Paragraph 5 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations in Paragraph 5.

6. BredaBeds states that Paragraph 6 contains no allegations directed to BredaBeds and, therefore, no response is required. Further, Paragraph 6 is a legal conclusion and/or statement of law for which no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 6, and therefore, denies the same.

7. Paragraph 7 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations in Paragraph 7 and further denies that Plaintiff is entitled to any recovery and/or relief set forth in Paragraph 7.

JURISDICTION AND VENUE

8. Paragraph 8 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies that this Court has subject-matter jurisdiction over this action.

9. Paragraph 9 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies that this Court has supplemental jurisdiction over Plaintiff's claims under New York law.

10. Paragraph 10 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds lacks knowledge and information regarding plaintiff's residency

and alleged attempts to visit the website, and therefore, denies the same. BredaBeds admits only that it is an Idaho corporation, denies that venue is proper in this district, and further denies any and all remaining allegations in Paragraph 10.

11. Paragraph 11 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds admits only that it is registered to do business in the State of Idaho with its principal offices located at 3318 W. Nelis Drive, Meridian, Idaho 83646. BredaBeds lacks knowledge and information regarding plaintiff's alleged visit to the Website, and therefore, denies the same. BredaBeds further denies that it is subject to personal jurisdiction in this district and denies any and all remaining allegations contained in Paragraph 11.

12. Paragraph 12 is a legal conclusion and/or statement of law for which no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 12, and therefore, denies same.

13. Paragraph 13 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 13 and further denies that Plaintiff is entitled to any relief and/or recovery on these claims.

PARTIES

14. BredaBeds states that Paragraph 14 contains no allegations directed to BredaBeds, and therefore, no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph, and therefore, denies the same.

15. BredaBeds states that Paragraph 15 contains no allegations directed to BredaBeds, and therefore, no response is required. Further, whether Plaintiff is a member of a protected class

is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and therefore, denies the same.

16. BredaBeds admits that it is an Idaho corporation, that it operates the Website, and that the Website provides consumers with access to various types and styles of Murphy and Wall beds. BredaBeds denies any and all remaining allegations contained in Paragraph 16.

17. Paragraph 17 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 17.

STANDING

18. BredaBeds states that Paragraph 18 contains no allegations directed to BredaBeds and, therefore, no response is required. Further, Paragraph 18 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18; therefore, BredaBeds denies the same.

19. BredaBeds admits that consumers may purchase BredaBeds' products and access other brand related content and services at the Website, and further admits that BredaBeds owns, operates, and controls the Website.

20. BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20; therefore, BredaBeds denies the same.

21. BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21; therefore, BredaBeds denies the same.

22. BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22; therefore, BredaBeds denies the same.

23. BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23; therefore, BredaBeds denies the same.

24. Paragraph 24 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 24.

25. BredaBeds denies any and all allegations contained in Paragraph 25 and further denies that Plaintiff is entitled to any relief and/or recovery on these claims.

26. BredaBeds denies any and all allegations contained in Paragraph 26.

27. BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27; therefore, BredaBeds denies the same.

28. BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28; therefore, BredaBeds denies the same.

NATURE OF ACTION

29. BredaBeds states that Paragraph 29 contains no allegations directed to BredaBeds, and therefore, no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29; therefore, BredaBeds denies the same.

30. BredaBeds states that Paragraph 30 contains no allegations directed to BredaBeds, and therefore, no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30; therefore, BredaBeds denies the same.

31. BredaBeds states that Paragraph 31 contains no allegations directed to BredaBeds, and therefore, no response is required. To the extent a response is required, BredaBeds lacks

knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31; therefore, BredaBeds denies the same.

32. BredaBeds states that Paragraph 32 contains no allegations directed to BredaBeds, and therefore, no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32; therefore, BredaBeds denies the same.

33. BredaBeds states that Paragraph 33 contains no allegations directed to BredaBeds, and therefore, no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33; therefore, BredaBeds denies the same.

34. BredaBeds states that Paragraph 34 contains no allegations directed to BredaBeds, and therefore, no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34; therefore, BredaBeds denies the same.

35. BredaBeds states that Paragraph 35 contains no allegations directed to BredaBeds, and therefore, no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35; therefore, BredaBeds denies the same.

STATEMENT OF FACTS

36. BredaBeds admits that it is an Idaho company that owns and operates the Website, which allows consumers to access goods and services that can be delivered throughout the United States. BredaBeds denies any and all remaining allegations contained in Paragraph 36.

37. BredaBeds admits that the Website offers products and services for online sale and general delivery to the public, and further admits that the Website facilitates the marketing and sale of BredaBeds' services.

38. BredaBeds states that Paragraph 38 contains no allegations directed to BredaBeds and, therefore, no response is required. To the extent a response is required, BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38; therefore, BredaBeds denies the same.

39. BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39; therefore, BredaBeds denies the same.

40. BredaBeds denies any and all allegations contained in Paragraph 40.

41. BredaBeds denies any and all allegations contained in Paragraph 41.

42. BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42; therefore, BredaBeds denies the same.

43. BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43; therefore, BredaBeds denies the same.

44. BredaBeds denies any and all allegations contained in Paragraph 44.

45. BredaBeds denies any and all allegations contained in Paragraph 45.

46. BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46; therefore, BredaBeds denies the same and further denies that the Website is not equally accessible to all.

47. BredaBeds lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47; therefore, BredaBeds denies the same.

48. BredaBeds denies any and all allegations contained in Paragraph 48.

49. BredaBeds denies any and all allegations contained in Paragraph 49.

50. Paragraph 50 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 50 and further denies that Plaintiff is entitled to any relief and/or recovery on these claims.

51. BredaBeds denies any and all allegations contained in Paragraph 51 and further denies that Plaintiff is entitled to any relief and/or recovery on these claims.

52. BredaBeds denies any and all allegations contained in Paragraph 52.

53. BredaBeds denies any and all allegations contained in Paragraph 53 and further denies that Plaintiff is entitled to any relief and/or recovery on these claims.

CLASS ACTION ALLEGATIONS

54. Paragraph 54 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 54.

55. Paragraph 55 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 55.

56. Paragraph 56 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 56.

57. Paragraph 57 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 57.

58. Paragraph 58 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 58.

59. Paragraph 59 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 59.

60. Paragraph 60 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 60.

61. Paragraph 61 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 61.

FIRST CAUSE OF ACTION
(Violations of the ADA, 42 U.S.C. §§ 12101 et seq.)

62. BredaBeds incorporates its responses to all previous paragraphs as if fully set forth in its response to Paragraph 62.

63. Paragraph 63 is a legal conclusion for which no response is required. Further, BredaBeds states that Paragraph 63 contains no allegations directed to BredaBeds and, therefore, no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 63.

64. Paragraph 64 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 64.

65. Paragraph 65 is a legal conclusion for which no response is required. Further, BredaBeds states that Paragraph 65 contains no allegations directed to BredaBeds and, therefore, no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 65.

66. Paragraph 66 is a legal conclusion for which no response is required. Further, BredaBeds states that Paragraph 66 contains no allegations directed to BredaBeds and, therefore, no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 66.

67. Paragraph 67 is a legal conclusion for which no response is required. Further, BredaBeds states that Paragraph 67 contains no allegations directed to BredaBeds and, therefore,

no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 67.

68. Paragraph 68 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies that it has engaged in any discriminatory conduct and further any and all remaining allegations contained in Paragraph 68.

69. Paragraph 69 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 69 and further denies that Plaintiff is entitled to any relief and/or recovery on these claims.

SECOND CAUSE OF ACTION
(Violations of the NYCHRL)

70. BredaBeds incorporates its responses to all previous paragraphs as if fully set forth in its response to Paragraph 70.

71. Paragraph 71 is a legal conclusion for which no response is required. Further, BredaBeds states that Paragraph 71 contains no allegations directed to BredaBeds and, therefore, no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 71.

72. BredaBeds states that Paragraph 72 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 72.

73. Paragraph 73 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 73.

74. Paragraph 74 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 74.

75. Paragraph 75 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 75.

76. Paragraph 76 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies that it has engaged in any discriminatory conduct and further denies any and all remaining allegations contained in Paragraph 76.

77. BredaBeds denies any and all allegations contained in Paragraph 77.

78. Paragraph 78 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies that it has engaged in any discriminatory conduct and further denies and further denies that Plaintiff is entitled to any recovery and/or relief on these claims. BredaBeds denies any and all remaining allegations contained in Paragraph 78.

79. Paragraph 79 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies that it has engaged in any discriminatory conduct and further denies and further denies that Plaintiff is entitled to any recovery and/or relief on these claims. BredaBeds denies any and all remaining allegations contained in Paragraph 79.

80. Paragraph 80 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 80 and further denies that Plaintiff is entitled to any relief and/or recovery on these claims.

81. Paragraph 81 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 81 and further denies that Plaintiff is entitled to any relief and/or recovery on these claims.

82. Paragraph 82 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 82 and further denies that Plaintiff is entitled to any relief and/or recovery on these claims.

THIRD CAUSE OF ACTION
(Declaratory Relief)

83. BredaBeds incorporates its responses to all previous paragraphs as if fully set forth in its response to Paragraph 83.

84. BredaBeds states that Paragraph 84 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 84.

85. Paragraph 85 is a legal conclusion for which no response is required. To the extent a response is required, BredaBeds denies any and all allegations contained in Paragraph 85 and further denies that Plaintiff is entitled to any recovery and/or relief on this claim.

AFFIRMATIVE DEFENSES

For its affirmative defenses to Plaintiff's Class Action Complaint, BredaBeds states as follows:

1. BredaBeds at all times acted in good faith and in compliance with the law.
2. The allegations contained in Plaintiff's Class Action Complaint fail to state a claim upon which relief can be granted.
3. The allegations contained in Plaintiff's Class Action Complaint fail to state a claim because the claims are improperly pled.
4. The allegations contained in Plaintiff's Class Action Complaint fail under the Americans with Disabilities Act ("ADA") and the New York City Human Rights Law ("NYCHRL") because Plaintiff cannot establish that he was excluded from participation in BredaBeds' goods, services, facilities, or accommodations because of his disability.
5. The allegations contained in Plaintiff's Class Action Complaint fail under the ADA and NYCHRL because Plaintiff cannot show that he was denied the full and equal enjoyment of

BredaBeds' goods, services, facilities, or accommodations because of his disability by BredaBeds failing to make a requested reasonable modification that was necessary to accommodate Plaintiff's disability.

6. The allegations contained in Plaintiff's Class Action Complaint fail under the ADA because Plaintiff did not request a reasonable modification that was necessary to accommodate Plaintiff's disability.

7. The allegations contained in Plaintiff's Class Action Complaint fail under the ADA and NYCHRL because its website is not a place or provider of public accommodation, resort, or amusement within the meaning of those laws.

8. The allegations contained in Plaintiff's Class Action Complaint fail under the ADA and NYCHRL because current law does not require BredaBeds to implement policies and procedures demanded by Plaintiff.

9. The allegations contained in Plaintiff's Class Action Complaint fail under the ADA and NYCHRL to demonstrate that the website is integrated with a physical location.

10. The allegations contained in Plaintiff's Class Action Complaint fail under the ADA and NYCHRL because implementing the WCAG 2.1 Level AA guidelines would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations of the website, or would result in an undue burden.

11. BredaBeds provides reasonable alternatives for visually impaired individuals, through among other things, providing in-person and telephonic assistance to provide customers with information about and access to its products and services.

12. The allegations contained in Plaintiff's Class Action Complaint fail to state a claim for declaratory judgment because such relief will not terminate the controversy giving rise to the proceeding.

13. The allegations contained in Plaintiff's Class Action Complaint are barred by the ripeness doctrine because the U.S. Department of Justice has not issued regulations on accessibility standards for websites.

14. BredaBeds' right to due process would be violated by imposing liability on it for the failure to abide by alleged accessibility standards about which the government has not given BredaBeds fair notice.

15. The allegations contained in Plaintiff's Class Action Complaint fail to demonstrate that Plaintiff sought and BredaBeds failed to provide appropriate auxiliary aids and services.

16. The Class Action Complaint should be dismissed for lack of Article III standing.

17. The allegations contained in Plaintiff's Class Action Complaint fail to show that a class can or should be certified pursuant to Federal Rule of Civil Procedure 23.

18. The allegations contained in Plaintiff's Class Action Complaint demonstrate that Plaintiff's claims are unique to Plaintiff and not common to the putative class.

19. The allegations contained in Plaintiff's Class Action Complaint demonstrate that Plaintiff will not adequately represent the putative class because his claims and alleged injuries are dissimilar to those of the putative class.

20. The allegations contained in Plaintiff's Class Action Complaint demonstrate that the putative class is not sufficiently numerous to warrant certification pursuant to Federal Rule of Civil Procedure 23.

21. BredaBeds denies that it has any liability or obligation for Plaintiff's or the putative class's alleged damages, and affirmatively states that Plaintiff's claims are barred, in whole or in part, for failure to join the proper, responsible part(ies) to this action and/or to bring or allege this action against the third part(ies).

22. Plaintiff's claims are barred, in whole or in part, because neither he nor any putative class member suffered any cognizable injury or loss. Further, Plaintiff's and the putative class's alleged damages are *de minimis*, and/or are too speculative, and/or are too remote, and/or are impossible to prove and/or allocate. Plaintiff and the putative class have also failed to mitigate their alleged damages.

23. Plaintiff's claims are barred, in whole or in part, because any award to him or any putative class member in this action would constitute unjust enrichment.

24. To the extent Plaintiff's claims for damages rely on acts of third part(ies) and/or BredaBeds' agents imputed to BredaBeds, the limitations inherent in general agency principles and corporate separateness prohibit recovery.

25. No act or omission of BredaBeds was malicious, willful, wanton, reckless or with a conscious disregard for the rights of others.

26. No act or omission of BredaBeds constituted willful or intentional discrimination.

27. Plaintiff and the putative class have failed to plead or establish entitlement to any award of attorneys' fees or costs.

28. Plaintiff and the putative class have failed to demonstrate that all administrative remedies were properly exhausted.

29. Plaintiff's Class Action Complaint, to the extent that it seeks relief and/or judgment on behalf of persons who are not parties to this action, violates BredaBeds' rights to substantive

and procedural due process and equal protection under the law as provided by the Fifth and Fourteenth Amendments of the United States Constitution and the New York Constitution.

30. The allegations contained in Plaintiff's Class Action Complaint inappropriately demand multiple recoveries for the same harm.

31. Because the allegations contained in Plaintiff's Class Action Complaint lack merit, BredaBeds should recover all costs and attorneys' fees incurred herein.

32. BredaBeds currently has insufficient knowledge or information from which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. BredaBeds reserves the right to assert additional affirmative defenses in the event discovery indicates additional affirmative defenses would be appropriate.

WHEREFORE, having fully answered Plaintiff's Class Action Complaint, BredaBeds respectfully requests that Plaintiff's claims be dismissed, for its attorneys' fees and costs, and for such other and further relief as the Court deems just and proper.

Dated: March 19, 2024

Respectfully submitted,

/s/ Rebecca A. Stark

Rebecca A. Stark

Dentons US LLP

1221 Avenue of the Americas

New York, New York 10020

Telephone: (212) 398-7614

Fax: (212) 768-6800

Rebecca.stark@dentons.com

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of March 2024, a true and accurate copy of the foregoing document was filed utilizing this Court's CM/ECF system, which serves notice upon the following counsel:

Bennitta Lisa Joseph
Joseph & Norinsberg, LLC
110 East 59th Street
Suite 3200
New York, NY 10022
212-227-5700
Email: bennittaj@gmail.com

Jon L. Norinsberg
Jon L. Norinsberg, Esq., PLLC
110 East 59th Street, Suite 2300
New York, NY 10022
212-791-5396
Email: jon@norinsberglaw.com

Attorneys for Plaintiff

/s/ Rebecca A. Stark
Counsel for Defendant